HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R.SUBHASH REDDY

W.A.NO. 1689 OF 2005

Dt.28.1.2006

Between:

Dandu Trinadha Raju and others

…Appellants

and

The District Collector, Visakhapatnam and others

…Respondents

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R.SUBHASH REDDY

W.A.NO. 1689 OF 2005

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

This is an appeal filed by the writ petitioner against the order dt. 30.8.2005 passed by a learned single Judge of this Court who dismissed the writ petition being WP No. 18880 of 2005.

The writ petition was filed challenging the notifications under Sections 4 (1) and 6 of the Land Acquisition Act (for short "the Act") and the proceedings initiated pursuant thereto by the State Government as illegal, arbitrary and unjust. The writ petitioners, who are 23 in number, contended that they had purchased house plots in Sy.No. 98/1A of Pedagantyada village and Mandal, Visakhapatnam. Each petitioner was in possession and enjoyment of the house plots ranging from an extent of 267 sq. yards to 366 sq. yards except 9th petitioner who possesses a house plot of 672 sq. yards. The petitioner who filed the affidavit on behalf of other petitioners is the 1st petitioner. It is curious to note that he owns 4 house plots in the area and petitioners 4 and 8 also possess 4 house plots each. An extent of Ac.14-20 cents covered by Sy.No. 98/IA of Peda Gantyada village was earlier acquired for the steel plant rehabilitation purpose by the Special Deputy Collector, Visakhapatnam Steel Plant in the year 1981, but the same was reconveyed to the original owners by proceedings dt. 3.12.1985 by the District Collector, Visakhapatnam, as the land was no longer required for rehabilitation of the displaced families as a result of establishment of Visakhapatnam Steel Plant. After it was reconveyed the petitioners purchased the house plots from the original owners in the year 1986. An application was moved before the Visakhapatnam Urban Development Authority for approval of layout, the plan was approved on 6.10.1988. Thereafter roads were developed and other development activities were taken up. The petitioners also paid development charges to VUDA and the Grampanchayat. The layout land is situated on the south eastern side of the road cum rail track to be formed for the Gangavaram Port. There was a housing colony of the A.P. Housing Board to the north of the land. The petitioners were not able to renew their lay out because of dearth of funds and as on today, on their own showing, they did not obtain permission to construct houses. In the year 1994 the Visakhapatnam Steel Plant proposed acquisition of the land by issuing a notification on 6.1.1994 for the purpose of laying a railway line to Gangavaram port from the Steel plant. The petitioners filed

their objections and an enquiry under Section 5-A of the Act was conducted by the Land Acquisition Officer. The proposal was dropped taking into consideration the request of the petitioners. The petitioners contended that they were under the hope that they could mobilize finances to construct houses in the near future, but the 1st respondent issued the notification under Section 4 (1) of the Act proposing to acquire the entire land of Ac.14-20 cents. It is submitted that the said notification did not contain the names of the petitioners, but the names of original owners were shown. The purpose mentioned in the notification was for providing development of Gangavaram Port and for providing infrastructure facilities. The notification was published in Andhra Jyothi daily newspaper on 18.4.2005. The notification also discloses that enquiry under Section 5-A of the Act was dispensed with by invoking the urgency clause under Section 17 (4) of the Act. Subsequently a declaration under Section 6 of the Act was also published on 26.4.2005 in new Indian Express News Paper. It was also mentioned in the notification that the possession of the land would be taken within 15 days from the date of publication of notice under Section 9 (1) of the Act, but the notice has not been issued so far. It is stated that in accordance with Section 17 (5) (a) of the Act the possession of the land had to be taken within three months from the date of publication of notification under Section 4 (1) of the Act and on this count the writ petition should be allowed. It is also stated that alternate land belonging to Visakhapatnam Steel Plant was available. Had they been given an opportunity, the petitioners would have shown that the land other than their land was available for acquisition.

Counter-affidavit has been filed by the Special Deputy Collector, Land Acquisition in which he stated that the Commissioner of Ports, Kakinada had sent a requisition through Collector, Visakhapatnam for acquisition of Ac.14-20 cents in Sy.No. 98/IA of Pedagantyada village and Mandal of Visakhapatnam district which was required for public purpose for providing back up area to Gangavaram Port. On requisition made by the Commissioner of Ports, Kakinada, the District

Collector, Visakhapatnam had approved the draft notification under Section 4 (1) of the Act on 10.4.2005. Draft declaration under Section 6 of the Act was published on 15.4.2005. Notices under Sections 9 (1) and 10 of the Act were also published and the persons interested in the land were asked to appear before the Land Acquisition Officer for award enquiry to be held on 16.9.2005. ON 16.9.2005 four persons out of the notified persons had attended for award enquiry before the Land Acquisition Officer and submitted their claim statements along with documents. The first appellant herein also attended the award enquiry and submitted a representation that he filed a writ appeal before this Court and rquested to grant him some more time for submitting claim statements. The award enquiry was in progress. It is further submitted that the enquiry under Section 5-A of the Act was dispensed with by invoking urgency clause under Section 17 (4) of the Act.

The learned counsel for the appellants/writ petitioners submits that the learned single Judge has not given his attention to the main ground which was agitated in the writ petition that had there been any urgency really, the possession would have been taken within the time prescribed by Section 17 (5) of the Act. Section 17 (5) was added to the Land Acquisition Act by State amendment. It lays down,

> "(5) (a) In any case where the State Government have directed under sub-section (4) that the provisions of Section 5-A shall not apply, the Collector shall take possession of the land within three months thereof.
>
> (b) If, however, the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of Section 5-A shall apply as if there is no such direction that Section 5-A shall not apply, and in all such cases the period of thirty days referred in Section 5-A shall be reckoned from the date of expiration of three months specified in clause (a)."

The only argument made by the respondents and contended in the counter-affidavit was that Section 17 of the Act prior to the State

amendment provided for invoking urgency clause and dispensing with enquiry as contemplated under Section 5-A of the Act to enable the State to take possession before passing of award under the Act, but by the State amendment sub-section 5 has been introduced by which a condition was put that unless possession is taken within three months of invoking of urgency clause, 5-A enquiry had to be held and acquisition proceedings proceeds thereafter and a reference is given to Section 17 (3-A) which reads,

> "Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),--
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> a. tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and
>
> b. pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, sub-section (2),
>
> and where the Collector is so prevented, the provisions of Section 31, sub-section (2), except the second proviso thereto, shall apply as they apply to the payment of compensation under that section."

We do not think there is any inter se conflict between different provisions of Section 17 of the Act. Section 17 (3-A) of the Act takes care of a particular situation, whereas Section 17 (5) (a) and (b) takes care of altogether a different situation. Therefore the suggestion that Section 17 (5) (a) and (b) of the Act should be deemed to have been repugnant to the Central Amendment is not correct. The mere fact that the possession was not taken for a period of three months from the date of notification under Section 4 (1) of the Act is in itself proof that there was no urgency. These three months could have been utilized for conducting an enquiry under Section 5-A of the Act. In this case the learned single Judge relied on a judgment of the Supreme Court reported in *Union of India Vs. Krishan Lal Arneja* and

reproduced para-17 of the judgment (para-17 of ALD). We also rely on the same judgment on which the learned single Judge relied and we are also reproducing the para-17 of the judgment,

> "Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration."

We feel that there was no urgency and the enquiry under Section 5-A of the Act could have been conducted as it is a valuable right of the owner. We may also point out that the respondents were so non-serious in issuing the notification under Section 4 (1) of the Act, as even the names of owners were not published.

For these reasons, we allow the writ appeal, set aside the order of the learned single Judge, and direct that the proceedings of the Land Acquisition Officer shall continue and an enquiry be conducted under Section 5-A of the Act. The notification under Section 4 (1) of the Act is upheld, however, the order dispensing with enquiry under Section 5-A of the Act is set aside. The respondents can proceed from that stage. No costs.

Dt. 28 .1.2006 _____

BILAL NAZKI J.

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R.SUBHASH REDDY